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FOR POLICY AND INTERNATIONAL AFFAIRS
BEFORE THE
AVIATION SUBCOMMITTEE
OF THE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE

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Mr. Chairman and Members of the Subcommittee:

Thank you for affording me this opportunity to offer to the Committee our perspectives on S. 2851, the Airline Competition Equity Act of 1990. The bill requires three major changes to the way in which the Department administers operations at the high density airports. First, it prohibits any transfers of slots, except for exchanges of one slot for another with no other consideration in the exchange. Second, the bill requires the creation of additional slots for new entrants at each of the four high density airports of up to five percent of the number of slots now available at each airport. Third, it requires the repeal of the high density rule in eighteen months. The issuance of any succeeding rule is conditioned on a certification by the Federal Aviation Administrator in a report to Congress that the rule is required in the interest of aviation safety and that there is no alternative way to achieve such safety with a less adverse effect on competition at that airport.

The Department recognizes the concerns underlying this bill, despite the fact that we oppose its enactment for a variety of practical reasons. Under different air traffic demand conditions we would like nothing better than to get rid of the high density rule, which would, of course, make the buy/sell rule and the requirement to create slots for new entrants unnecessary.

Since the fundamental subject of this legislation is the high density rule, I would first like to describe its history, reasons for its creation and what we believe would be the result of its relaxation or removal. I will then turn to a discussion of the selling and trading of slots.

The high density rule is found at Subpart K of Part 93 of the Federal Aviation Regulations. The rule was adopted in 1969 under the FAA's authority, in Section 307 of the Federal Aviation Act of 1958, to regulate air traffic for efficiency as well as safety. Since 1969, the High Density Rule has served to limit the number of airline, commuter, and general aviation flights which can be operated into four of the nation's busiest airports: Kennedy International and LaGuardia in New York; Chicago's O'Hare International; and Washington National. The justification for the rule today is largely the same as in 1969: the capacity of these airports, measured primarily by calculation of the engineered performance standards, will not support additional operations

without an unacceptable level of delays and an adverse impact on the flying public. The high density rule provides a systematic way of constraining air traffic demand to the capacity of the subject airports by limiting the number of "slots" (which are the number of IFR takeoffs and landings that can occur during certain time periods) and their distribution by hourly or half-hourly period to the available capacity for each airport. The FAA continually monitors the performance of the ATC system and the number of operating delays at major airports. As a result, the number of operations permitted under the rule today is greater at three of the airports than the number permitted under the original rule, in recognition of expanded airport facilities and improvements in air traffic procedures and technology.

At Washington National Airport, the total number of permitted operations remains the same as when the rule was promulgated, but the number of air carrier operations was reduced from 40 per hour to 37 per hour, as part of the comprehensive Metropolitan Washington Airports Policy issued in 1981. That policy substantially ended a longstanding, acrimonious debate over Federal policy regarding the operation of National Airport, and abrogation of one part of the agreed policy may resurface other related issues. That agreement became the basis for the transfer of National and Dulles Airports to operation by local authorities, was incorporated in the Metropolitan Washington Airports Act of 1986 and remains in effect today. Opposition to the increase in air carrier operations contemplated by this bill can be expected from the airport operator, as well as from the local governments in the region.

The bill, in addition to repealing the buy-sell regulations, would increase the number of operations at each of the four airports by up to five percent within several months, and could require the removal of all operational limits within 18 months. It is the FAA's opinion that this increase would immediately and noticeably worsen air traffic delays at LaGuardia, O'Hare and Kennedy Airports. These three airports are currently the first, second, and fourth worst airports, respectively, for operating delays among all major U.S. airports. Thirty percent of the air traffic delays at all U.S. airports occurs at those three airports; yet they account for only four percent of total system operations. O'Hare alone accounts for over sixteen percent of all air traffic delays nationally. While National Airport is not currently subject to delays as severe as the other three high density airports, that airport has only one major runway, and any substantial increase in jet operations could quickly increase the number of operating delays to an unacceptable level.

Each of these airports is a key facility in the National Airspace System. Operational conditions at each have an effect on virtually every other major airport in the nation. For example, if departures are delayed at O'Hare, those flights will arrive late at destination airports, delaying connecting flights and continuing flights out of those airports. Similarly, if LaGuardia

cannot accept more arrivals than are currently inbound, air traffic control (ATC) will have to hold departures on the ground at the airport of origin. In either case, the inconvenience to travelers extends far beyond the high density airport where the delay originated.

The FAA has taken comprehensive measures in both the New York and Chicago areas to enhance the efficiency of air traffic services and ensure that the system is safe. Under the Expanded East Coast Plan, the FAA revised the air route structure and arrival and departure procedures in the Northeast to increase the efficient use of airspace. The FAA Office of Aviation Safety has conducted System Safety and Efficiency Reviews of both O'Hare Airport and the Northeast Corridor. These reviews resulted in more than a hundred recommendations for improved procedures, accelerated acquisition of new equipment, and additional resources. The FAA has completed many of the recommended actions at this time.

As recently as 1988, the National Transportation Safety Board was recommending that the allowable number of slots under the high density rule at Chicago be reduced due to the congestion which the NTSB viewed as the major cause of the operational problems being experienced at Chicago. While we did not agree that a reduction of slots was necessary, the FAA has worked very hard to improve conditions in the Chicago area. Chicago has had a priority for the installation of new equipment, has been one of the locations participating in the controller "pay experiment," and has undergone some reorganization of controller positions to better organize the traffic workload. All of these efforts have resulted in a dramatic improvement of the situation at Chicago and delays at O'Hare have decreased by fifteen percent for the first six months of this year. We do not want to lose the ground we have gained by eliminating the rule or by increasing the number of slots without believing that we are equipped to handle the resulting increases in traffic.

There is a limit to what refinements to ATC procedures and an increase in resources can accomplish in these highly complex operating environments. The amount of airspace in these areas cannot be increased. As a practical matter, operational capacity in the near to mid term is also limited to current levels by the unexpandable physical capacity of the airport, particularly at LaGuardia and National. As a result, significantly higher levels of demand will simply overload the system.

Air traffic control maintains safety in such circumstances through traffic flow management programs. Under a traffic management program, aircraft are held on the ground until they can be accommodated at the departure airport, in the enroute airway system, and at the arriving airport without compromise of the FAA's separation standards. Standard separation between aircraft must be maintained at all times, regardless of demand, and sometimes must be increased for safety or local operating conditions.

What this means is that flights will be delayed. Even a 5 percent increase in operations at Kennedy, LaGuardia or O'Hare, for example, will exacerbate the already high level of delays, and generate additional delays and flight cancellations at other major airports by the "ripple effect" of the original delays cascading through the system. Our simulations indicate that even under ideal weather conditions a five percent increase in operations at these airports would generate increases in delays of thirteen to eighteen percent. Poor weather would raise the delay increase to thirty-seven percent.

Endemic operating delays are serious: not only are they inconvenient and costly to travelers; they make reliable airline scheduling difficult; and they place added strain on ATC resources. Because of the increased delays and added traffic, we could expect to see prolonged periods of intense work activity for FAA controllers. Additionally, extra demand at those airports will eventually contribute to unanticipated airborne holding which the FAA has sought to avoid since 1981 due largely to its impact on ATC workload.

The High Density Rule addresses excessive delay by limiting demand on the system, that is, the number of flights that can be scheduled in a given time period. Traffic flow management is not a substitute for the High Density Rule; traffic management programs help controllers maintain safe separation of traffic, but they do not limit total demand or reduce delay. Nor can the airlines be expected to resolve these problems on their own; airlines may, for example, institute unrealistic scheduling practices in response to other competitive pressures. An actual example is the scheduling of more than 20 departures in the same minute, even though those flights could not possibly operate as scheduled. The inevitable overscheduling that would result from this bill would be felt immediately by those on existing, scheduled flights. Because these flights would no longer be guaranteed an arrival or departure position, the pattern of delays could become highly unpredictable, as well as longer in duration. It is akin to removing the limits on access to parking in a busy building. Those who work there will have no way of predicting when they head to work when a space might become available.

For all of the above reasons, the FAA considers it extremely important that ATC be permitted the flexibility to limit operations at selected airports, for the efficient and orderly movement of traffic in the National Airspace System.

It is also important to recognize that the removal or easing of the high density rule would increase airport noise in three highly noise sensitive communities. The high density rule effectively places an upper limit on aircraft noise at the affected airports by limiting the total number of aircraft operations. At Washington National the number of air carrier operations in the high density rule was influenced by noise considerations. The

noise-sensitive communities surrounding National Airport can be expected to voice strong opposition to any increase in the number of air carrier flights. In Chicago, aircraft noise and the number of operations at O'Hare are highly sensitive noise issues. In New York and New Jersey many communities have raised the issue of airport noise at LaGuardia and Kennedy Airports. An increase in operations at those airports and the extension of peak level operations late into the evening would clearly have added noise impacts.

From the Federal perspective, the Federal Aviation Administration would need to comply with the National Environmental Policy Act (NEPA) with respect to the environmental impacts of altering the high density rule. The need to assess both noise and air quality impacts (through effects on ground access traffic) can be anticipated from increasing the number of flights. A five percent increase in air carrier operations could have a significant environmental impact.

Buying and Selling of Slots

Under current regulations -- commonly referred to as the buy/sell rule -- slots may be sold or traded for any consideration and for limited or open ended periods of time. Prior to the implementation of the buy/sell rule, slots at the high density rule airports were allocated among the carriers by scheduling committees consisting of representatives of carriers serving or desiring to serve each of the high density airports. That process had largely broken down under the pressure of increasing demand by the airlines for the limited number of slots, and new entrants were unable to obtain slots. Also, the 1981 air traffic controller strike necessitated a temporary cutback in operations that was carried out by FAA rule.

Following an extensive rulemaking process lasting some 18 months, the Department issued a rule allowing slots to be bought and sold in order to provide the carriers with the means to make the adjustments to markets and schedules that are essential to the effective functioning of the commercial airline industry. Five percent of existing slots were made available to new entrants upon implementation of the buy/sell rule; all remaining slots were allocated to the incumbent holders of the slots at the time of implementation. Since April 1, 1986, the holders of the slots at these airports have been able to buy, sell and trade them at their discretion.

A major objective of the "buy/sell rule" is to allow the use of the slots to be adjusted in response to market demand and, therefore, be put to their most productive use with minimal interference by the government. Since the rule took effect, transactions have occurred routinely. We have experienced essentially no problems with this aspect of the buy/sell rule and believe that it is accomplishing what we expected in this respect -- that is, providing a mechanism by which slots could change

hands in response to market forces in a quick and efficient manner. The fact that permanent slot sales occur relatively infrequently is due, we believe, not to an ineffective market, but rather to the fact that the slots are by and large already being employed in their highest and best use.

With respect to another of its objectives, we recognize that the buy/sell rule does not appear to have worked as well. There is evidence that the rule has not been as effective in allowing new entrants and small incumbents access to slots through purchase. It is in this context that America West filed a petition with the FAA on July 1, 1987, asking that a rulemaking proceeding concerning the allocation of slots at National and LaGuardia Airports be initiated and recommending the withdrawal of slots from the current holders and their reallocation to new entrants.

The Department's FY 1989 Appropriations Act required the FAA Administrator to "institute a rulemaking proceeding to consider the need for changes to the existing regulation concerning the transfer of slots held by air carriers and commuter operators at each of the four airports covered by [the buy/sell rule]" by the end December 31, 1988.

The responses to the America West petition and to the rulemaking required by Congress were consolidated in a Notice of Proposed Rulemaking (NPRM) issued on December 22, 1988. In addition to requesting responses from interested parties on the issues concerning the buy/sell rule which were raised in the Appropriations Act, the NPRM proposed to tighten the requirements for the operation of existing slots in order to make it more difficult to protect unused slots from the "use-or-lose" provisions of the rule. Some changes in the slot rule were implemented in a final rule which became effective on August 22, 1989, but the rule did not substantially affect the availability of slots to new entrants. Issues not addressed in the August final rule remain under consideration by the Department.

With respect to the provision of S. 2851 which would eliminate the selling and trading of slots, other than on a one for one basis, it seems to us that this does nothing to improve the situation and, in fact, eliminates one important benefit of the current rule. The flexibility which the current rule affords with respect to sales and trades allows the system to make the best use of the limited resource embodied in the slots. Under the bill the distribution of slots would be locked in place among the incumbent carriers.

This is true even when many of the transactions are for limited periods of time. A carrier which does not have an immediate use for a slot can, in effect, lease the slot to a carrier which can make good use of it, rather than being forced to operate it in a marginal operation to avoid its loss under the use-or-lose rules. Our observations suggest that the carriers will, in fact, operate more than the optimal number of flights temporarily in order to prevent permanent loss of the slot when the present flexibility is denied them.

In summary, the present rule provides fluidity to the distribution of slots and thus increases the efficiency of the system. Disallowing the selling and uneven trading of slots will only reintroduce a rigidity to the system that will reduce its efficiency while not causing carriers to give up slots for reallocation. Thus, we do not believe that eliminating the authority to sell slots will result in any increase in the availability of slots. In addition, we believe it will have the unfortunate result of reducing the effectiveness with which the existing slots can be used and, as a result, the overall efficiency of the commercial aviation system.

This completes my prepared statement, and I would be pleased to answer your questions.